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July 22, 1994

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, DC 20554

RE: GC Docket No. 92-52

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of Pears Broadcasting, Inc., are an original and four copies of its "Comments" in the above-referenced docket.

Should there be any questions regarding this matter, please communicate with this office.

Very truly yours,



William D. Wallace

Enclosures

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JUL 22 1994

In the Matter of)
)
Reexamination of the Policy)
Statement on Comparative)
Broadcast Hearings)
_____)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

GC Docket No. 92-52
RM-7739, RM-7740, RM-7741

To: The Commission

COMMENTS OF PEARS BROADCASTING, INC.

Pears Broadcasting, Inc. (Pears), by its undersigned attorneys, hereby files these comments in response to the Commission's Second Further Notice of Proposed Rule Making in the above-referenced docket. See FCC 94-167 (June 22, 1994). Pears is an applicant for a new VHF television facility in Columbia, Louisiana (MM Docket No. 88-183), for which three other mutually exclusive applications remain pending.¹ Because the rules and policies adopted in this rulemaking may govern decisions in pending cases, Pears has a substantial interest in this proceeding.

¹ Pears' application was filed in 1987. After a comparative hearing, the Administrative Law Judge granted Pears' application in 1990. Woods Communications Group, Inc., 5 FCC Rcd 5869 (ALJ 1990). The decision was modified by the Review Board, 6 FCC Rcd 3530 (Rev. Bd. 1991); but, on review, Pears was reinstated as the comparative winner by the Commission, 7 FCC Rcd 78 (1992). Petitions for reconsideration filed by the other three applicants were denied, 7 FCC Rcd 4604 (1992), and they appealed. Following its decision in Bechtel v. FCC, 10 F.3d 875 (1993), the District of Columbia Circuit Court of Appeals remanded all three appeals for further proceedings at the Commission.

I. BROADCAST MANAGEMENT EXPERIENCE SHOULD BE A
SIGNIFICANT COMPARATIVE FACTOR IN AWARDING LICENSES.

No experience is more relevant to successful construction, implementation and operation of a new broadcast station than prior management experience at an existing broadcast station. While the relevance to the public interest of an owner-manager may not be readily apparent (see Bechtel v. FCC, 10 F.3d at 879-82), it is indisputable that a person at the helm of a new broadcast station who is familiar with the procedures, needs and pitfalls of operating a station increases its chances of success over a person with no prior broadcast management experience.² The public interest would be served by ensuring that a new station has the best available odds for developing enduring and robust service.

Awarding a preference (through points or otherwise) to applicants with broadcast management experience advances the goals of the Commission's policies concerning comparative broadcast hearings in several important respects. First, the rules to be adopted in this proceeding will apply to the award of licenses for new stations. Broadcast experience is particularly relevant in licensing new owners in comparison with approving renewals or transfer applications because such experience would assist a permittee in developing and fulfilling a construction plan for the facility. Whether or not the winning applicant retains

² The Commission has stated that lack of broadcast management experience is remediable. Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393, 396 n. 8 (1965). However, the same rationale applies to local residence; and so, no distinction in weight should be applied to these criteria.

control of the station in the long term, his or her experience would be useful in the critical construction phase for the facility.

Second, broadcast management experience of station owners is relevant whether they are directly involved in management themselves or merely supervising those directly involved.³ In either event, the owners will have to make ultimate decisions concerning construction and operation of the station. More experienced owners should be capable of making better informed decisions.

Moreover, broadcast management experience can be measured objectively in years of relevant experience and by level of management positions. In such a manner, broadcast experience could be factored into an evaluation of applicants on a point basis as the Commission has proposed. See Notice of Proposed Rule Making, 7 FCC Rcd 2664, 2668-69 (1992). A scale of points based on years and level of experience could be easily developed as part of the comparative criteria.

The Commission has recognized the value of broadcast management experience in evaluating station applicants for the past 30 years. See Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393, 396 (1965). To ensure capable management is available for new broadcast facilities, the

³ Although the Commission stated in the Second Further Notice, FCC 94-167, at 1 n.3, that it would not review the existing use of minority status in comparative evaluations, Pears submits that comparative preferences for both minority status and local residence with civic participation fall victim to the same legal disabilities recognized in Bechtel for the integration criterion, and, therefore, allowing these criteria to be determinative in comparative proceedings is arbitrary and capricious.

Commission should adopt rules and policies in this proceeding which incorporate a substantial preference for this significant comparative factor.

II. THE COMMISSION SHOULD ADOPT A PROCEDURE TO EXPEDITE THOSE CASES WHICH HAVE BEEN PENDING FOR SEVERAL YEARS.

As the Commission recognized in the Second Further Notice, the Bechtel decision has vitiated the criteria used for evaluating all pending comparative cases. Some cases, such as the Columbia, Louisiana, VHF proceeding, have been pending for more than five years, and had actually achieved final Commission action prior to the D.C. Circuit's decision in Bechtel. Columbia, LA, and similarly-situated communities have been waiting years for the allocated broadcast service. Moreover, the parties involved have expended considerable amounts of time and resources in litigating these cases, and since Bechtel, all activity has been brought to a standstill. It is obvious that the public interest would be served by expediting decisions in these cases. Therefore, the Commission should develop an expedited hearing and review process for such cases.

In this regard, Pears recommends that, once new criteria have been adopted, the Commission should schedule hearings for cases starting with the oldest filed. As short a time period as possible should be allowed for taking evidence (if necessary), filing memoranda of law on the relevant decisional criteria, and seeking review of staff adjudications at the full Commission. The communities of license and parties in these cases deserve quick action toward achieving finality.